

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Marcella Luna	Team: Team # 2	CCRB Case #: 200307724	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/14/2003 10:15 PM, Friday, 08/15/2003	Location of Incident: § 87(2)(b), Brooklyn	Precinct: 63	18 Mo. SOL 2/14/2005	EO SOL 2/14/2005	
Date/Time CV Reported Wed, 10/01/2003 5:08 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 10/02/2003 8:38 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)		
§ 87(2)(b)		
§ 87(2)(b)		
§ 87(2)(b)		
§ 87(2)(b)		

Witness(es)	Home Address
§ 87(2)(b)	
§ 87(2)(b)	

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Robert Martinez	20291	922716	063 Precinct
3. SGT Joseph Walas	05351	894425	063 Precinct

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Murphy	14857	926095	063 Precinct
2. POM Derek Andreone	08420	921917	063 Precinct
3. POM Daniel Callow	26166	922056	063 Precinct

Officer(s)	Allegation	Investigator Recommendation
A.SGT Joseph Walas	Abuse: On August 14, 2003, Sergeant Joseph Walas stopped and questioned § 87(2)(b) on East 54th Street in Brooklyn.	§ 87(2)(b)
B. An officer	Abuse: On August 14, 2003, an officer stopped and questioned § 87(2)(b) and unidentified others on East 54th Street in Brooklyn.	§ 87(2)(b)
C. An officer	Abuse: On August 14, 2003, an officer frisked and/or searched § 87(2)(b) and unidentified others on East 54th Street in Brooklyn.	§ 87(2)(b)
D. An officer	Abuse: On August 14, 2003, an officer threatened § 87(2)(b) with the use of force on East 54th Street in Brooklyn.	§ 87(2)(b)
E. An officer	Force: On August 14, 2003, an officer used physical force against § 87(2)(b) on East 54th Street in Brooklyn.	§ 87(2)(b)
F. An officer	Force: On August 14, 2003, an officer used physical force against § 87(2)(b) while outside of the 63rd Precinct stationhouse.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
G.POM Robert Martinez	Discourtesy: On August 15, 2003, Police Officer Robert Martinez spoke obscenely to § 87(2)(b) and § 87(2)(b) § 87(2)(b) at the 63rd Precinct stationhouse.	

## Synopsis

On August 14, 2003, the night of the blackout, § 87(2)(b) was arrested in the vicinity of 1237 East 54<sup>th</sup> Street in Brooklyn § 87(2)(a) 160.50. § 87(2)(b) alleged that he and a group of unidentified individuals, including his cousin, § 87(2)(b) were stopped, placed in handcuffs, and then frisked and/or searched after they observed officers chase after two unidentified males. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) additionally alleged that an officer threatened him with the use of force and used physical force against him while at the incident location. § 87(2)(g) § 87(2)(b) also alleged that while outside of the 63<sup>rd</sup> Precinct stationhouse, an officer elbowed him in the face, causing his mouth to bleed and his face to swell. § 87(2)(g) § 87(2)(b) s mother, § 87(2)(b) and sister, § 87(2)(b) alleged that when they went to the 63<sup>rd</sup> Precinct stationhouse on August 15, 2003, PO Martinez spoke obscenely to them. § 87(2)(g)

## Summary of Complaint

§ 87(2)(b), § 87(2)(b)'s attorney, reported the following complaint to the CCRB, via email, on October 1, 2003 (Enclosure 3A-C). § 87(2)(b) was not a witness to the incident.

§ 87(2)(b)

§ 87(2)(b), a § 87(2)(b)-old male black, was interviewed at the CCRB on October 16, 2003 (Enclosure 5A-C). On April 19, 2004, § 87(2)(b) viewed photographs of five officers identified through communication § 87(2)(b) and by § 87(2)(b) as being present at the time of his arrest (Enclosure 5D-K). The only officer § 87(2)(b) identified was PO Andreone whom he identified as his arresting officer and as the officer that placed him into handcuffs. During both interviews, § 87(2)(b)'s attorney, § 87(2)(b), was present.

On August 14, 2003, the night of the blackout, § 87(2)(b) left his friend, § 87(2)(b) (identified during the investigation as § 87(2)(b) § 87(2)(b) house, located at § 87(2)(b) § 87(2)(b), to return to his home, approximately one mile away. § 87(2)(b) initially stated that he was alone, but later he said that he had been hanging out with a group of people in front of § 87(2)(b) home. § 87(2)(b) stated that he had been at § 87(2)(b) § 87(2)(b) house since approximately 4pm that day.

While waiting across the street from § 87(2)(b) house for a ride home for approximately 45 minutes, § 87(2)(b) observed two men run across a schoolyard from the direction of 55<sup>th</sup> Street. § 87(2)(b) observed two uniformed officers (Police Officer 1 and Police Officer 2) chase after the two men, along with two uniformed officers (Police Officer 3 and Police Officer 4) in an unmarked black Impala drive by two or three times. § 87(2)(b) stated that Police Officer 3 and Police Officer 4 were shining a small flashlight out of the window of their vehicle. (At his initial interview, § 87(2)(b) stated that he believed Police Officer 1's name was Martinez and that Police Officer 3's name was Murphy, but he was unable to provide a description of the officer whom he believed was Murphy. Upon viewing officer photographs, § 87(2)(b) did not identify Police Officers 2, 3, and 4 and identified Police Officer 1 as his arresting officer, PO Andreone). A few minutes later, PO Andreone and Police Officer 2 approached § 87(2)(b) and Police Officer 1 asked him who was running. § 87(2)(b) then pointed towards Avenue I, the direction he had observed the two men run. A minute or two after the officers had stopped, the same black Impala that § 87(2)(b) had previously observed driving in the area pulled up to the location and PO Andreone and Police Officer 2 got out of the car.

The officers then "searched" § 87(2)(b) along with five other males and two women that had also been standing on the street. According to § 87(2)(b), § 87(2)(b) was one of the individuals that had been searched. § 87(2)(b) knew two of the others that had been stopped, but only by the street names § 87(2)(b) and § 87(2)(b) § 87(2)(b) described that the officer (whom he was unable to identify) patted down the

outside of his clothing, between his legs, under his arms, and the back of his feet but never stuck his hands in his pockets. § 87(2)(b) stated that nothing was found on him.

After everyone was frisked, the officers stood around talking. § 87(2)(b) was unable to recall what the officers were talking about. § 87(2)(b) then heard an officer (whom he was unable to identify) make the statement, “what time is it?” After this comment was made, PO Andreone placed § 87(2)(b) in handcuffs, the five males were placed in handcuffs, and the two women were told that they could leave. Once everybody was in handcuffs, the officers had everyone sit down on the ground with their backs against a fence. § 87(2)(b) then asked the officers why they were being arrested. In response, Police Officer 4 said to § 87(2)(b) “shut up before I kick you in the face.” During his initial CCRB interview, § 87(2)(b) originally stated that the officer had made the comment prior to everyone being placed in handcuffs. During the photo viewing, § 87(2)(b) never mentioned that this comment was made to him.

§ 87(2)(b) stated that when the officers handcuffed everyone, a number of officers responded and residents came out of their homes. Shortly after everybody was placed in handcuffs, an officer (whom § 87(2)(b) believed to be PO Andreone) picked § 87(2)(b) off of the ground, took him to the side, and informed him that an individual by the name of § 87(2)(b) had been running. § 87(2)(b) denied that he knows anyone by the name of § 87(2)(b). PO Andreone additionally told § 87(2)(b) that he was going to be let go and removed his handcuffs.

After § 87(2)(b) was released from the handcuffs, he started to walk away. Shortly afterwards, a uniformed officer grabbed § 87(2)(b) placed him in handcuffs again, and moved him next to a car. ( § 87(2)(b) did not identify the officer that allegedly handcuffed him for the second time). § 87(2)(b) then heard the officers asking everyone else for their identification. During this time, § 87(2)(b) asked a female officer, “what am I doing here,” to which she told § 87(2)(b) “shut up.” § 87(2)(b) complied. According to § 87(2)(b) nobody else was arrested.

§ 87(2)(b) was then placed in a marked police vehicle car and transported to the 63<sup>rd</sup> precinct stationhouse by Police Officer 5 and Police Officer 6. § 87(2)(b) was unable to identify these officers by name and he did not identify them when shown officer photographs). § 87(2)(b) stated that as he was being placed into the vehicle, Police Officer 5 forced him and pushed him inside. According to § 87(2)(b) this prompted a female officer that was at the location to say, “you see how he’s handling that kid?” § 87(2)(b) denied that he resisted in any way.

As the officers were escorting him into the stationhouse, § 87(2)(b) started questioning the officers as to why he had been arrested to which Police Officer 5 “chucked me [him] in the mouth.” § 87(2)(b) described that Police Officer 5 hit him in the mouth with his right elbow, causing his gums to bleed, causing him to spit blood, his face to swell, and pain in his jaw. Although § 87(2)(b) had no visible injuries at the time of his CCRB interview, he stated that since the incident, his gums bleed if touched in a certain way. § 87(2)(b) did not receive or request any medical treatment for his injuries.

The following morning, August 15, 2003, while § 87(2)(b) was still in police custody, § 87(2)(b) s mother, § 87(2)(b) and sister, § 87(2)(b) came to the stationhouse to find out why § 87(2)(b) had been arrested. § 87(2)(b) was unaware that § 87(2)(b) and § 87(2)(b) had come to the precinct until approximately 10am on August 15, 2003. At that time, Police Officer 7 (unidentified) told § 87(2)(b) that Police Officer 1 (who § 87(2)(b) identified in his initial CCRB interview as having the last name Martinez) had yelled and cursed at them.

Additionally during the morning of August 15, 2003, § 87(2)(b) was informed, by whom he identified as two ATF agents, that a 9mm gun had been found containing six bullets in the magazine and one in the chamber. The agents then showed § 87(2)(b) the gun, to which he denied knowing anything about. During his CCRB interview, § 87(2)(b) denied that he had a gun on him during the incident and denied that he owns a gun. § 87(2)(b) additionally stated, “no, I’ve never got arrested for nothing. I don’t even have criminal record.” § 87(2)(a) 160.50

During his initial CCRB interview, which occurred two months after the incident, § 87(2)(b) stated that he did not obtain medical treatment for his injuries but stated that he might still go. During his photo viewing, § 87(2)(b) was once again asked if he obtained medical treatment given that the Notice of Claim (Enclosure 31A-K) stated that he had medical expenses as a result of the incident. § 87(2)(b) then stated that he went to § 87(2)(b) shortly after leaving Central Booking following his arrest. When informed that during his initial CCRB interview, he had stated that he did not go to the hospital, § 87(2)(b) replied, "I think I went to the hospital" and indicated that he might have gone after his CCRB interview. § 87(2)(b) was then reminded that his first interview at the CCRB was in October, two months after the incident. § 87(2)(b) then expressed that he was not sure of the date he received treatment.

Although during his initial CCRB interview, § 87(2)(b) stated that he was unable to provide a description of the officer whom he believed was named Murphy, upon viewing the photograph of PO Murphy, § 87(2)(b) asked, "it's officer Murphy?" When informed that he could not be given the officer's name, § 87(2)(b) indicated that he did not recognize the photograph of PO Murphy.

§ 87(2)(b) then stated that on an occasion prior to his arrest on August 14, 2003, PO Murphy pushed him in the bushes near a park on Avenue I in Brooklyn. § 87(2)(b) was unable to specify a date of incident beyond that it occurred during the summertime, possibly in July of 2003, on a Friday night. During the photo viewing, § 87(2)(b) called his cousin, § 87(2)(b) who informed him that the incident occurred in April or May.

§ 87(2)(b) stated that on the date of incident, he was in the park with his friends § 87(2)(b), § 87(2)(b), and § 87(2)(b), whose last names he did not know and for whom he had no contact information. (It was not until § 87(2)(b) called § 87(2)(b) during the photo viewing that he provided that § 87(2)(b) was also present.) While in the park, § 87(2)(b) noticed PO Murphy and three other officers, all of whom were in plain clothes. While leaving the park and walking down Avenue I, the officers approached § 87(2)(b) and his friends. § 87(2)(b) stated that at that time, his hands were in his back pockets. One of the officers then pulled out his gun, pointed it at § 87(2)(b) and his friends, and said, "don't even try it." § 87(2)(b) stated that he was uncertain which officer drew his weapon). § 87(2)(b) stated that PO Murphy patted down the outside of his clothing. It was not until directly asked that § 87(2)(b) stated that PO Murphy had entered his pockets. § 87(2)(b) stated that PO Murphy "searched me down and then pushed me in the bushes." Although § 87(2)(b) stated that the officers then "searched" his friends, he later stated that he did not see his friends being searched. § 87(2)(b) denied that he received any injuries beyond scratches.

§ 87(2)(g)

## **Results of Investigation**

### **Civilian Interviews**

§ 87(2)(b) & § 87(2)(b) § 87(2)(b)'s mother, § 87(2)(b) and his sister, § 87(2)(b) were interviewed at the CCRB on November 7, 2003 (Enclosures 6B-D & 7A-B). § 87(2)(b) additionally provided a phone statement about the incident on October 27, 2003 (Enclosure 6A). § 87(2)(g) On June 2, 2004 at their home at § 87(2)(b) in Brooklyn, § 87(2)(b) and § 87(2)(b) viewed five photographs of officers that were identified through communication § 87(2)(b) and by § 87(2)(b) as being present during the time of § 87(2)(b)'s arrest (Enclosures 6E-K & 7C-I). Neither witnessed § 87(2)(b)'s arrest, but during the morning of August 15, 2003, they were involved in an encounter with an officer at the 63<sup>rd</sup> Precinct stationhouse.

On August 15, 2003, § 87(2)(b) and § 87(2)(b) went to the 63<sup>rd</sup> Precinct stationhouse after § 87(2)(b) had found out the previous night, upon receiving a phone call from § 87(2)(b) that § 87(2)(b) had been arrested. While at the stationhouse, § 87(2)(b) and § 87(2)(b) spoke with an officer whom § 87(2)(b) identified by the name of Menendez (from his badge) and that § 87(2)(b) had identified as either Menendez or Melendez. (During the photo viewing, § 87(2)(b) identified PO Martinez as the officer whom she spoke with at the stationhouse. Although § 87(2)(b) expressed



§ 87(2)(b) stated that the incident occurred on the night of the blackout. On that night, § 87(2)(b) was hanging out on the corner with approximately six individuals from the neighborhood. According to § 87(2)(b), everyone had been outside "before it even got dark." When asked, § 87(2)(b) denied that anyone that he was with had been drinking, smoking, or using drugs while they were together.

While hanging out, § 87(2)(b) observed a couple of people run through the park from the direction of East 55th Street, followed by officers. § 87(2)(b) stated that he could not clearly observe what was happening because it was "real dark." The officers then stopped and "searched" everyone that was on the corner, including § 87(2)(b). § 87(2)(b) stated that he lifted his arms and an officer patted him down. § 87(2)(b) denied that the officers entered his pockets or the pockets of anyone else that had been stopped. According to § 87(2)(b) the officers found nothing. § 87(2)(b) was uncertain if the officers asked for anyone's identification.

As the officers stopped the group, an officer took § 87(2)(b) and another male (whom § 87(2)(b) was unable to identify), put them in handcuffs, and searched them. The officers then let § 87(2)(b) leave. As an officer was frisking the other male, another officer pointed at § 87(2)(b) put him in handcuffs, "slammed" him on a car, and frisked him again. § 87(2)(b) was then taken away from the location. § 87(2)(b) stated that § 87(2)(b) was the only person that was arrested during the incident. § 87(2)(b) denied that he heard officers threaten anyone with the use of force or use profanities during the incident.

§ 87(2)(b) Not until his photo viewing on April 19, 2004 did § 87(2)(b) identify § 87(2)(b) § 87(2)(b) his cousin and brother to § 87(2)(b) as a witness to the incident. On April 30, 2003, § 87(2)(b) consented to a brief phone interview (Enclosure 10A-B). Despite efforts to schedule an in-person interview with § 87(2)(b) to date, he has been uncooperative with the investigation.

§ 87(2)(b) identified himself as a witness to the incident involving § 87(2)(b) during the night of the blackout. § 87(2)(b) stated that he was across the street, approximately two to three yards away, when § 87(2)(b) was arrested. § 87(2)(b) stated that he observed officers pull up to the location and approach a group of approximately 15 individuals that had been standing in the area, including § 87(2)(b). § 87(2)(b) stated that the officers handcuffed everyone, except for the two females that had been standing in the group, and then had them sit on the floor. § 87(2)(b) heard the officers say that § 87(2)(b) and another male (whom § 87(2)(b) did not identify) had a gun. The officers then placed § 87(2)(b) in a car and released the second male. § 87(2)(b) stated that once § 87(2)(b) was put into a police car, the handcuffs were removed from the remaining individuals. § 87(2)(b) denied that he observed the officers use force against anyone and denied that he heard officers threaten anyone with the use of force.

§ 87(2)(b) stated that he spoke with § 87(2)(b) about the incident approximately two days after his arrest. § 87(2)(b) denied that he observed injuries on § 87(2)(b) or that § 87(2)(b) had complained of having been injured.

§ 87(2)(b) was also informed that § 87(2)(b) had alleged that on a date prior to August 14, 2003, officers stopped him, § 87(2)(b) and a group of males as they exited a park on Avenue I. § 87(2)(b) confirmed that on a prior date, he § 87(2)(b) and a group of friends were stopped, questioned, frisked, and searched by a group of officers as they were leaving a park located on Avenue I in Brooklyn. § 87(2)(b) also acknowledged that the officers drew their weapons, but he denied that the guns were pointed at anyone.

§ 87(2)(b) stated that he was uncertain of the date of this incident beyond that it occurred during the summer, between 9pm-10pm. (During § 87(2)(b)'s photo viewing, § 87(2)(b) was quoted as having informed § 87(2)(b) that the incident occurred in April or May). § 87(2)(b) stated that he would check with his friends to see if they remember the exact date and have them contact the CCRB. To date, none of the other individuals that were involved in the incident have contacted the CCRB. § 87(2)(g)

## Officer Interviews

### PO Derek Andreone

PO Derek Andreone, § 87(2)(b) s arresting officer, was interviewed at the CCRB on March 4, 2004 (Enclosure 12A-C). On August 14, 2003, PO Andreone worked 2000x0435, assigned to anti-crime with Sgt. Walas, PO Callow, and PO Martinez. PO Andreone was dressed in uniform and was assigned to an unmarked vehicle. PO Andreone's memo book reflects that he was not supposed to be working at the time of the incident, but that he had been called into work because of the blackout (Enclosure 11A-C). PO Andreone's name does not appear on any of the roll calls for the tours that would have been working at the time of the incident (Enclosures 21A-F & 22A-E).

On August 14, 2003, PO Andreone was on routine patrol when he observed two males in a schoolyard even though the schoolyard was closed. PO Andreone stated that the two men were smoking what possibly could have been a marijuana joint or a cigarette. PO Andreone and PO Callow then exited their vehicle with the intent to approach the two males to find out what was going on. PO Andreone denied that Sgt. Walas had directed him and PO Callow to approach the two males. PO Andreone stated that as he and PO Callow got out of their vehicle, PO Martinez and Sgt. Walas drove around the block of East 54<sup>th</sup> Street.

As PO Andreone and PO Callow approached the two males, without saying anything to them, the males ran in opposite directions. PO Andreone then placed a radio call for a foot pursuit. PO Andreone estimated that he was approximately ten feet away from the males when they first ran. PO Andreone and PO Callow then pursued one of the males who PO Andreone described to be wearing a white T-shirt (later identified by PO Andreone as § 87(2)(b)). PO Andreone stated that no other officers pursued after the second male and he was never apprehended. According to PO Andreone, the second male was not pursued because he does not like splitting up with his partner. As § 87(2)(b) ran around the school building to the front of the property, PO Andreone observed § 87(2)(b) reach into his waistband and throw a gun. PO Andreone estimated that he was approximately five feet behind § 87(2)(b) when he dropped the gun. PO Andreone stated that he knew immediately that the object was a gun.

As § 87(2)(b) ran through the schoolyard, shortly after dropping the gun, he approached a group of approximately four to five people that were standing in front of the school and attempted to blend in with them. PO Andreone stated that throughout the entire foot pursuit, he and PO Callow "never lost sight of him § 87(2)(b)" (PO Andreone's memo book additionally documents that he never lost site of § 87(2)(b) during the pursuit (Enclosure 11A-C)). Immediately, PO Andreone approached § 87(2)(b) and placed him in handcuffs. PO Andreone stated that at that time, § 87(2)(b) was breathing heavy, his heart was beating, and he was sweating, all indications that he had been running.

At around the same time PO Andreone and PO Callow reached the front of the schoolyard, PO Martinez and Sgt. Walas approached the location in their vehicle. PO Andreone then informed Sgt. Walas that he had observed a gun being dropped. PO Andreone then returned to the schoolyard to recover the gun. Upon recovering the gun, which was loaded, PO Andreone returned to where § 87(2)(b) had been stopped and gave Sgt. Walas the gun. § 87(2)(b) was then arrested. PO Andreone expressed that he was certain that § 87(2)(b) was the person that he had observed drop the gun. When asked if § 87(2)(b) was saying anything during his arrest, PO Andreone replied, "he was very compliant. There was no problems with him whatsoever." PO Andreone denied that he or that he heard any other officers tell § 87(2)(b) "shut up before I kick you in the face" or threaten § 87(2)(b) with the use of force. According to PO Andreone, there was never a need to use force against § 87(2)(b).

PO Andreone denied that he or that he observed any of the other officers he was working with that evening approach anyone that stood in the group with § 87(2)(b). PO Andreone continued to deny that he or that he observed anyone else being stopped even when informed that witnesses to the incident have indicated that they had been frisked and searched. PO Andreone did not recall anyone else besides § 87(2)(b) having been handcuffed during the incident but stated "they might have been because they were there."

PO Andreone stated that since there was a foot pursuit, a number of officers responded to the location after he had arrested § 87(2)(b). PO Andreone was unable to recall the identities of any of the responding



officers. According to PO Andreone, § 87(2)(b) was transported back to the stationhouse in a marked police vehicle. PO Andreone denied that force was used with § 87(2)(b) as he was being placed in the vehicle. PO Andreone estimated that he remained at the location for approximately five minutes.

PO Andreone stated that his only interaction with § 87(2)(b) back at the stationhouse was recording his pedigree information and bringing him to the holding cell. PO Andreone denied that § 87(2)(b) complained of any injuries or asked for medical treatment. PO Andreone denied that he observed injuries on § 87(2)(b). PO Andreone additionally denied that he had used force with § 87(2)(b) or that any other officers had informed him that they had used force.

PO Andreone confirmed that on August 15, 2003 at approximately 9am, he was present at the stationhouse. PO Andreone denied that during that time, he spoke with anyone that had identified themselves as relatives of § 87(2)(b). PO Andreone additionally denied that any other officers had informed him that they had spoken to relatives of § 87(2)(b). PO Andreone stated that if he had met with § 87(2)(b)'s mother, he would have remembered it.

#### Sgt. Joseph Walas

Sgt. Joseph Walas was interviewed at the CCRB on March 26, 2004 after being identified by PO Andreone as having worked on his anti-crime team on the date of incident (Enclosure 14A-C). On August 14, 2003, Sgt. Walas worked 2000x0400, assigned to anti-crime with PO Andreone, PO Martinez, and PO Callow. Sgt. Walas was dressed in uniform and was assigned to an unmarked car. Tour 1 roll call for August 15, 2003, which begins work on August 14, 2003, lists Sgt. Walas as being assigned to "chart change" (Enclosure 22A-E). Sgt. Walas' memo book indicates that he was not supposed to work on August 14, 2003, but that he had been called in because of the blackout (Enclosure 13A-B).

On August 14, 2003, from approximately 30 feet away, Sgt. Walas observed two male blacks in a schoolyard located on 54<sup>th</sup> Street and Avenue H. Sgt. Walas confirmed that at the time of the incident, it was dark outside because of the blackout. According to Sgt. Walas, since the schoolyard was closed at the time, the males were considered to be trespassing. Sgt. Walas denied that he observed the two males smoking or drinking. A mutual decision was then made to stop the individuals because they were trespassing on school property.

As Sgt. Walas, PO Andreone, and PO Callow exited their vehicle to approach the two males, one of the males (identified through the investigation as § 87(2)(b)) ran through the schoolyard, which exits on 54<sup>th</sup> Street. As PO Andreone and PO Callow chased after § 87(2)(b), Sgt. Walas spoke with the other male that had been observed in the schoolyard. Sgt. Walas did not get this individual's name. Sgt. Walas stated that the male he spoke with informed him that they were "just hanging out." Sgt. Walas stated that no summons was issued and no stop and frisk report was completed. Sgt. Walas stated that he did not issue a summons because, "I used my discretion." Sgt. Walas denied that the male was asked for identification and could not recall if he had been frisked.

After conversing with the male for approximately ten seconds, Sgt. Walas "ran around" to the other side of the schoolyard. Upon arriving at the new location, Sgt. Walas met up with PO Andreone, PO Callow, and PO Martinez who were standing with "a bunch of people." At that time, § 87(2)(b) was in the process of being handcuffed. Sgt. Walas stated that since he did not get a good look at § 87(2)(b) when he first fled, he could not say for certain whether or not the person that was placed in handcuffs was that individual. However, PO Andreone and PO Callow had informed Sgt. Walas that the male in handcuffs was the person that had been observed fleeing. PO Andreone informed Sgt. Walas that he observed § 87(2)(b) throw a gun from his waist. According to Sgt. Walas, PO Andreone had recovered a gun but Sgt. Walas was not sure where it had been found. Sgt. Walas was then shown the gun. Sgt. Walas denied that he observed § 87(2)(b) being frisked and/or searched. Sgt. Walas denied that he observed force being used against § 87(2)(b). Sgt. Walas was unable to recall if the individuals in the group were stopped and/or questioned but denied that he had personally stopped or questioned anyone else. Sgt. Walas did not recall seeing anyone in the group being frisked and/or searched. Sgt. Walas did not remember seeing anyone, besides § 87(2)(b), in handcuffs.

Sgt. Walas departed the location after officers responded to transport § 87(2)(b) to the stationhouse. Sgt. Walas denied that he threatened anyone with the use of force and did not recall hearing any other officers threaten anyone with the use of force while at the incident location. Sgt. Walas denied that he or that any other officers said, “shut up before I kick you in the face.” Sgt. Walas was unaware of any force having been used with § 87(2)(b).

Following the incident, Sgt. Walas returned to the stationhouse with PO Andreone, PO Callow, and PO Martinez and “briefly” assisted PO Andreone with the arrest. Sgt. Walas stated that the only time he saw § 87(2)(b) after the arrest was “briefly” in front of the desk at the stationhouse. Sgt. Walas denied observing any injuries on § 87(2)(b) and did not recall him mentioning that he had been injured.

Sgt. Walas provided that he was present at the stationhouse until 4am on August 15, 2004. Therefore, Sgt. Walas would not have been present when § 87(2)(b) and § 87(2)(b) came to the stationhouse.

#### PO Daniel Callow

PO Daniel Callow was interviewed at the CCRB on March 26, 2004 after being identified by PO Andreone as having worked on his anti-crime team on the date of incident (Enclosure 16A-B). On August 14, 2003, PO Callow worked an overtime tour of 2000x0435, assigned to anti-crime with PO Andreone, PO Martinez, and Sgt. Walas. PO Callow was dressed in uniform and was assigned to an unmarked vehicle. PO Callow’s memo book indicates that he was not scheduled to work on August 14, 2003, but had been called in because of the blackout (Enclosure 15A-B). PO Callow’s name does not appear on any of the roll calls for the tours that would have been working at the time of the incident (Enclosures 21A-F & 22A-E).

On August 14, 2003, PO Callow observed a male black (identified through the investigation as § 87(2)(b)), by himself, in a schoolyard. Upon PO Callow, PO Andreone, and Sgt. Walas exiting their vehicle to approach § 87(2)(b) because he was considered to be trespassing, § 87(2)(b) fled. PO Callow initially stated that he, PO Andreone, and Sgt. Walas pursued § 87(2)(b) but later stated that he had learned that Sgt. Walas had stopped to speak with someone that had been standing near the fence of the schoolyard. PO Callow estimated that he was 20 feet behind § 87(2)(b) during the pursuit. During the pursuit, PO Callow observed § 87(2)(b) throw a firearm from his waistband. PO Callow stated that he was right behind the male when he dropped the gun. PO Callow stated that he and PO Andreone never lost sight of § 87(2)(b) during the pursuit.

Upon arriving on East 54<sup>th</sup> Street, § 87(2)(b) stopped with a group of approximately six or seven people that were “hanging out” on the street and acted “like we [the officers] didn’t see him.” PO Andreone then approached § 87(2)(b). PO Andreone then asked § 87(2)(b) what he threw, placed him in handcuffs, and then recovered the gun. PO Callow denied that § 87(2)(b)’s handcuffs were ever removed during the incident. PO Callow believed that § 87(2)(b) would have been frisked and/or searched at the location, but he could not say whether or not he observed it. To the best of his recollection, PO Callow did not believe any of the individuals that had been in the group with § 87(2)(b) were stopped or questioned. PO Callow denied that anyone in the group was frisked or searched and denied that anyone, besides § 87(2)(b) had been placed in handcuffs. PO Callow denied that he was ever physically involved with § 87(2)(b). PO Callow denied that he or that any other officers threatened § 87(2)(b) with the use of force or said, “shut the fuck before I kick you in the face.” PO Callow denied that he observed officers use force against § 87(2)(b).

PO Callow stated that PO Martinez arrived at the scene in the officers’ vehicle a short time later. PO Callow stated a call for additional units was placed as soon as the foot pursuit began to which approximately 15 uniformed officers responded. PO Callow was unable to identify any of these officers. PO Callow denied that he was involved in transporting § 87(2)(b) to the stationhouse. PO Callow was unable to recall whether or not he observed § 87(2)(b) at the stationhouse and denied that he was involved in processing his arrest. PO Callow ended his tour on August 15, 2003 at 4:35am and did not return to work until midnight later that same day. Therefore, PO Callow would not have been present when § 87(2)(b) and § 87(2)(b) came to the stationhouse on August 15, 2003.

PO Robert Martinez

PO Robert Martinez was interviewed at the CCRB on March 26, 2004 after being identified by PO Andreone as having worked on his anti-crime team on the date of incident (Enclosure 18A-C). On August 14, 2003, PO Martinez worked 2100x0535 plus overtime until 0300 on August 16, 2003, assigned to anti-crime patrol with PO Callow, PO Andreone, and Sgt. Walas. PO Martinez was dressed in uniform and was assigned to an unmarked vehicle. PO Martinez was the operator of the vehicle. Tour 1 roll call for August 15, 2003, which starts work on August 14, 2003, identifies PO Martinez as being assigned to anti-crime with PO Murphy (Enclosure 22A-E).

On August 14, 2003, PO Martinez, PO Callow, PO Andreone, and Sgt. Walas were driving on East 55<sup>th</sup> Street when they observed a number of individuals in a schoolyard. PO Martinez was unable to recall the number of individuals he had observed. PO Martinez was unable to recall if he observed the individuals with anything in their hands or if they appeared to be using any type of drugs.

As the officers that were seated in the rear of the vehicle exited the car to approach the individuals that were observed in the schoolyard, the individuals in the schoolyard fled. Sgt. Walas, PO Andreone, and PO Callow then pursued after the individuals as PO Martinez drove the vehicle around the block to East 54<sup>th</sup> Street, the only exit from the schoolyard. PO Martinez stated that he only observed a few seconds of the foot pursuit, during which time he did not observe any of the people that were being chased drop anything.

By the time PO Martinez arrived to East 54<sup>th</sup> Street, less than a minute later, he observed PO Callow and PO Andreone standing next to a group of people with one individual in handcuffs (identified through the investigation as § 87(2)(b)). PO Martinez stated that he personally did not recognize § 87(2)(b) and could not say for certain whether or not he had observed § 87(2)(b) as having been involved in the foot pursuit. According to PO Martinez, § 87(2)(b) was the only person he saw in handcuffs during the incident. PO Andreone then informed PO Martinez that they had found a gun. PO Martinez did not recall seeing § 87(2)(b) being frisked and/or searched and denied that he personally frisked and/or searched him. PO Martinez denied that he spoke with or had physical contact with § 87(2)(b). PO Martinez denied that he observed any officers use physical force with § 87(2)(b) and denied that he heard any other officers threaten § 87(2)(b) with the use of force.

PO Martinez stated that since there were “a lot of people outside,” upon his arrival, he primarily stayed in the area and watched the crowd. PO Martinez estimated that approximately 10-15 uniformed officers responded to the location in marked police vehicles after his arrival. PO Martinez was unable to recall the identities of these officers. PO Martinez was unable to recall if anyone that had been standing in the area had been approached but denied that he personally spoke with anyone in the area. PO Martinez denied that he or that he observed anyone at the incident location being frisked and/or searched.

PO Martinez stated that he departed from the location and returned to the stationhouse. PO Martinez was uncertain how it was that § 87(2)(b) was transported to the stationhouse but denied that he was involved in the transport. PO Martinez denied that he observed § 87(2)(b) being placed in a vehicle to be transported to the stationhouse. According to PO Martinez, there was nothing remarkable about the incident.

PO Martinez denied that he was involved in any portion of the arrest processing for § 87(2)(b). PO Martinez stated that he had § 87(2)(b) in a holding cell at the stationhouse as he placed a person that he had arrested during an unrelated incident into the cell. PO Martinez denied that he conversed with § 87(2)(b) and denied that he observed any injuries on him.

PO Martinez confirmed that on August 15, 2003 at around 9am-10am, he was at the stationhouse. PO Martinez denied that he spoke with anyone that identified themselves as relatives of § 87(2)(b). PO Martinez denied that on August 15, 2003, he spoke with any family members, including those of the individual he had arrested. Even when informed that it is alleged that he was the officer that spoke with the relatives of § 87(2)(b) PO Martinez continued to deny that he was involved. PO Martinez added that he would not have spoken with any of the family members of § 87(2)(b) because it was not his arrest.

PO James Murphy

PO James Murphy was interviewed at the CCRB on June 4, 2004 after § 87(2)(b) identified him by name as being present at the incident (Enclosure 20A-B). On August 14, 2003, PO Murphy worked 2130 until 0230 on August 16, 2003. PO Murphy was uncertain what his assignment was, but he provided that he was working with PO Cane and PO Ryan. PO Murphy appears on Tour 1 roll call for August 15, 2003, which starts work on August 14, 2003, as being assigned to anti-crime with PO Martinez (Enclosure 22A-E). PO Murphy was dressed in uniform and believed that he was assigned to a marked police vehicle. Although PO Murphy confirmed that the incident occurred on the night of the blackout, he stated that the streetlights were on at the time of the incident.

On August 14, 2003, PO Murphy responded to the location in question upon hearing a call for assistance. PO Murphy was unable to recall if he or the other officers he was working with communicated over the radio that they were responding to the location. PO Murphy stated that when he heard the call, he could hear people screaming in the background and knew that officers were running. PO Murphy did not know the exact nature of the call.

When PO Murphy arrived at the location, he observed approximately five people against a fence with one in handcuffs (identified through the investigation as § 87(2)(b) and a “few” officers. PO Murphy stated that the individuals that were on the fence were just stopped and standing there and it appeared that they were “free to go.” PO Murphy stated that one of the officers at the scene had a firearm in his hand. PO Murphy stated that when he arrived at the location, he got out of his car and walked over to the site. By that time, § 87(2)(b) was being placed into a car and a crowd was gathering in the area. PO Murphy stated the crowd appeared “angry.” When asked if anything was done to control the crowd, PO Murphy responded, “we just got out of there.” PO Murphy was uncertain which vehicle § 87(2)(b) was taken to and was uncertain if he was transported in his vehicle.

PO Murphy then left the location, between 30 seconds to one minute after he first arrived at the location. During the time he was at the location, PO Murphy never saw § 87(2)(b)'s handcuffs being removed. PO Murphy denied that he spoke with anyone while at the incident location. PO Murphy did not recall seeing anyone use force against § 87(2)(b). PO Murphy denied that he observed anyone being frisked and/or searched during the time he was at the incident location and he was unaware of anyone having been frisked and/or searched. PO Murphy denied that he heard any officers threaten anyone with the use of force and that he or that any other officers said, “shut up before I kick you in the face.” PO Murphy was unaware of anyone else having been handcuffed during the incident. According to PO Murphy, there was nothing unusual about the incident.

PO Murphy believed that following the incident, he “passed” § 87(2)(b) as he was in a holding cell at the stationhouse. PO Murphy did not recall having a conversation with § 87(2)(b). PO Murphy denied seeing any injuries on § 87(2)(b). PO Murphy denied that he has had any interactions with § 87(2)(b) before or after the incident.

PO Murphy confirmed that at around 9am on August 15, 2003, he was working and that he was inside of the stationhouse. PO Murphy was unaware of anyone coming to that stationhouse about that time to find out about anyone that had been arrested. PO Murphy was unable to recall if he had observed an officer speak with individuals that identified themselves as relatives of § 87(2)(b).

PO Cane & PO Ryan

PO Cane and PO Ryan, PO Murphy's partners on the date of incident, were not interviewed by the CCRB. The personnel wheel confirmed that PO Ryan resigned from service on September 18, 2003. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Additional Officer Interviews

Besides the aforementioned officers, no other officers were identified or interviewed regarding this incident. Communication § 87(2)(b) (see below) fail to identify any other officers, besides anti-crime

officers, as having responded to the incident. Additionally, it is clear that there were officers mandated to work overtime and to work on their day off because of the blackout. For example, PO Andreone and PO Callow, whose names do not appear on any of the relevant roll call, both worked on their day off. Furthermore, roll calls for some of the tours during the blackout have officers from outside commands, such as vice units, assigned to uniformed patrol. § 87(2)(g)

Regardless roll calls from the 63<sup>rd</sup> Precinct for the relevant tours have been included in the case file (Enclosures 21A-F, 22A-E, & 23A-I).

## **Documents**

§ 87(2)(b)'s complaint was not filed at the CCRB until after the charges against § 87(2)(b) were dismissed and his arrest was sealed. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b), § 87(2)(g)

### Command Log (Enclosure 25A)

§ 87(2)(b)'s arrest was logged into the 63<sup>rd</sup> Precinct's command log at 10:50pm on August 14, 2003. The entry documents that § 87(2)(b) was arrested § 87(2)(a) 160.50 § 87(2)(b)'s physical/mental condition is listed as apparently normal.

### UF-61 (Enclosure 26A-B)

§ 87(2)(a) 160.50

### Stop & Frisk Log (Enclosure 28A)

The Stop and Frisk log for the 63<sup>rd</sup> Precinct contains no entries documenting that stop and frisk reports were prepared near the location where § 87(2)(b) was arrested on the date of his arrest.

### Prisoner Holding Pen Roster (Enclosure 29A)

An entry in the 63<sup>rd</sup> Precinct Prisoner Holding Pen Roster documents that § 87(2)(b) had no injuries.

### Communication Records (Enclosure 24A-C)

In order to assist with identifying the additional units that responded to the incident in question, it was essential for all of the relevant communication records to be obtained. Despite numerous requests for communication records pertaining to the foot chase allegedly called over by PO Andreone, these records were never located. The Disciplinary Assessment Unit provided that as a result of the blackout, there were numerous communication failures.

The only communication records that were located in connection with the incident document that six individuals were being held at East 54<sup>th</sup> Street and Avenue I by the 63<sup>rd</sup> Precinct anti-crime unit and that one arrest was made. No other units were identified as having responded to the location.

## **Officer CCRB Histories (Enclosure 1A-B)**

PO Martinez has been employed by the NYPD for five years. In CCRB case 200205713, PO Martinez received command discipline for speaking obscenely. Sgt. Walas has been employed by the NYPD for 16 years. Sgt. Walas has had no substantiated CCRB allegations during his tenure with the NYPD.

### **§ 87(2)(b)'s Criminal Conviction History**

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## Notice Of Claim (Enclosure 31A-K)

On § 87(2)(b), § 87(2)(b)'s attorney, § 87(2)(b) filed a summons in a civil case with the City of New York Corporation Counsel Office. In the claim, it is alleged that § 87(2)(b) was stopped and searched without reasonable suspicion and arrested without cause. It is additionally alleged that § 87(2)(b) was assaulted and battered during his arrest, causing injury, "requiring the expenditure of money for treatment." A total of six causes of action were listed. The Notice of Claim states that the "plaintiff demands judgement against the defendants, jointly and severally," in the amount of \$250,000 for each cause of action, \$250,000 for punitive damages for each cause of action, and reimbursement for attorney fees. The defendants named in the claim are Police Commissioner Raymond Kelly, Caption Kevin McGinn of the 63<sup>rd</sup> Precinct, PO Andreone, PO Murphy, and John Does 1-4.

### Conclusions and Recommendations

#### Undisputed Facts

It is not in dispute that on August 14, 2003, § 87(2)(b) was arrested § 87(2)(a) 160.50 § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### Credibility

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) & § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) each denied that PO Martinez yelled at them or used any profanities besides the one comment. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### *Officer Credibility*

§ 87(2)(b), § 87(2)(g)

while none of the officers that were interviewed acknowledged that anyone was stopped after § 87(2)(b)'s arrest, communication records support that six individuals were being held at the arrest location. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### **Allegations**

**Allegation A: Abuse of Authority - On August 14, 2003, Sergeant Joseph Walas stopped and questioned § 87(2)(b) on East 54th Street in Brooklyn.**

PO Andreone acknowledged that he was the first officer to have observed § 87(2)(b) trespassing, was the officer that placed § 87(2)(b) in handcuffs, and was identified as § 87(2)(b)'s arresting officer. Sgt. Walas also acknowledged that he saw § 87(2)(b) trespassing and that there was a mutual decision made to stop him. Even though Sgt. Walas did not personally stop § 87(2)(b) since he is PO Andreone's supervisor, in essence, he authorized the stop. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

According to Criminal Procedure Law 140.50 (Enclosure 0E) and as stated in Patrol Guide Procedure 212-11 (Enclosure 0D), an officer can stop an individual when he/she "reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor." § 87(2)(b), § 87(2)(g)

Citing *People v. Leung*, Kamins New York Search and Seizure (Enclosure 0H), if "a police officer entertains a reasonable suspicion and is therefore justified in making a 'stop,' he can effect the stop, if necessary, by pursuing the suspect if the suspect flees upon the officer's approach." § 87(2)(b), § 87(2)(g)

According to Patrol Guide Procedure 208-01 (Enclosure 0B), an officer can arrest someone without a warrant “for an offense when reasonable cause to believe offense committed in his presence.” § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 208-03 (Enclosure 0C) stipulates that when an arrest is effected, an officer is to “immediately field search/frisk prisoner and search adjacent vicinity for weapons, evidence and/or contraband.” § 87(2)(b), § 87(2)(g)

**Allegation B: Abuse of Authority - On August 14, 2003, an officer stopped and questioned § 87(2)(b) and unidentified others on East 54th Street in Brooklyn.**

**Allegation C: Abuse of Authority - On August 14, 2003, an officer frisked and/or searched § 87(2)(b) and unidentified others on East 54th Street in Brooklyn.**

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation D: Abuse of Authority - On August 14, 2003, an officer threatened § 87(2)(b) with the use of force on East 54th Street in Brooklyn.**

§ 87(2)(b), § 87(2)(g)

**Allegation E: Force – On August 14, 2003, an officer used physical force against § 87(2)(b) on East 54th Street in Brooklyn.**



§ 87(2)(b) alleged that while being placed in a police vehicle at the incident location, he was pushed inside, prompting a female officer to make the comment, “you see how he’s handling that kid?”

§ 87(2)(b), § 87(2)(g)

**Allegation F: Force - On August 14, 2003, an officer used physical force against § 87(2)(b) while outside of the 63rd Precinct stationhouse.**

§ 87(2)(b) alleged that while outside of the 63<sup>rd</sup> Precinct stationhouse, one of the officers that transported him from the incident location elbowed him in the face, causing his gums to bleed and his face to swell.

§ 87(2)(b), § 87(2)(g)

Additionally, § 87(2)(b) did not seek medical treatment for his alleged injuries.

§ 87(2)(b), § 87(2)(g)

**Allegation G: Discourtesy - On August 15, 2003, Police Officer Robert Martinez spoke obscenely to § 87(2)(b) and § 87(2)(b) at the 63rd Precinct stationhouse.**

Although § 87(2)(b) and § 87(2)(b) identified the officer that they spoke with at the stationhouse as having the last name “Melendez” or “Menendez,” the NYPD personnel database confirms that there are no officers with either of those last names assigned to the 63<sup>rd</sup> Precinct. Additionally, upon viewing officer photographs, § 87(2)(b) identified PO Martinez as the officer she and § 87(2)(b) had spoken to at the stationhouse. § 87(2)(b) also indicated that PO Martinez looked familiar when she was shown his photograph. § 87(2)(b)

Furthermore, PO Martinez placed himself at the stationhouse at the date and time § 87(2)(b) and § 87(2)(b) spoke with the subject officer. § 87(2)(b), § 87(2)(g)

According to Patrol Guide Procedure 203-09 (Enclosure 0A), an officer is to “be courteous and respectful.” Although § 87(2)(b) and § 87(2)(b) stated that PO Martinez made a comment to them to the effect of “because of your smart ass (mouth) daughter,” PO Martinez denied that he interacted with them at the stationhouse. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: